

DEPARTMENT OF HOMELAND SECURITY

COAST GUARD

33 CFR Part 103

[USCG-2003-14733]

RIN 1625-AA42

Area Maritime Security

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments and notice of meeting.

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SUMMARY: This interim rule establishes U.S. Coast Guard Captains of the Ports as Federal Maritime Security Coordinators, and establishes requirements for Area Maritime Security Plans and Area Maritime Security Committees. This rule is one of six interim rules in today's Federal Register that comprise a new subchapter on the requirements for maritime security mandated by the Maritime Transportation Security Act of 2002. These six interim rules implement national maritime security initiatives concerning general provisions, Area Maritime Security (ports), vessels, facilities, Outer Continental Shelf facilities, and the Automatic Identification System. Where appropriate, they align domestic maritime security

requirements with those of the International Ship and Port Facility Security Code and recent amendments to the International Convention for the Safety of Life at Sea. To best understand these interim rules, first read the interim rule titled "Implementation of National Maritime Security Initiatives" (USCG-2003-14792).

DATES:

Effective date. This interim rule is effective from [Insert date of publication in the Federal Register] until November 25, 2003.

Comments. Comments and related material must reach the Docket Management Facility on or before [Insert date 30 days after date of publication in the Federal Register]. Comments on collection of information sent to the Office of Management and Budget (OMB) must reach OMB on or before [Insert date 30 days after date of publication in the Federal Register].

Meeting. A public meeting will be held on July 23, 2003, from 9 a.m. to 5 p.m., in Washington, D.C.

ADDRESSES:

Comments. To ensure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically to the Docket Management System website at <http://dms.dot.gov>.

(2) By mail to the Docket Management Facility (USCG-2003-14733), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

Meeting. A public meeting will be held on July 23, 2003 in Washington, D.C. at the Grand Hyatt Washington, D.C., 1000 H Street, N.W., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander Richard Teubner, U.S. Coast Guard by telephone 202-267-1103, toll-free telephone 1-800-842-8740 ext. 7-1103, or electronic mail

msregs@comdt.uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, at 202-366-5149.

SUPPLEMENTARY INFORMATION:

Due to the short timeframe given to implement these National Maritime Transportation Security initiatives, as directed by the Maritime Transportation Security Act (MTSA) of 2002 (MTSA, Public Law 107-295, 116 STAT. 2064), and to ensure all comments are in the public venue for these important rulemakings, we are not accepting comments containing protected information for these interim rules. We request you submit comments, as explained in the Request for Comments section below, and discuss your concerns or support in a manner that is not security sensitive. We also request that you not submit proprietary information as part of your comment.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

Electronic forms of all comments received into any of our dockets can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor unit, etc.) and is open to the public without restriction. You may also review the Department of Transportation's complete Privacy Act Statement published in the Federal Register on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov/>.

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. Your comments will be considered for the final rule we plan to issue before November 25, 2003, to replace this interim rule. If you choose to comment on this rule, please include your name and address, identify the specific docket number for this interim rule (USCG-2003-14733), indicate the specific heading of this document to which each comment applies, and give the reason for each comment. If you have comments on another rule, please submit those comments in a separate letter to the docket for that rulemaking. You may submit your comments and material by mail, hand delivery, fax, or

electronic means to the Docket Management Facility at the address under ADDRESSES. Please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

#### Public Meeting

We will hold a public meeting on July 23, 2003, in Washington, D.C. at the Grand Hyatt Hotel, at the address listed under ADDRESSES. The meeting will be from 9 a.m. to 5 p.m. to discuss all of the maritime security interim rules, and the Automatic Identification System (AIS) interim rule, found in today's Federal Register. In addition, you may submit a request for other public meetings to the Docket Management Facility at the address under ADDRESSES explaining why another one would be beneficial. If we determine that other meetings would aid this rulemaking, we will hold them at a time and place announced by a later notice in the Federal Register.

## Regulatory Information

We did not publish a notice of proposed rulemaking for this rulemaking and are making this rule effective upon publication. Section 102(d)(1) of the MTSA of 2002 (Public Law 107-295, 116 STAT. 2064) requires the publication of an interim rule as soon as practicable without regard to the provisions of chapter 5 of title 5, U.S. Code (Administrative Procedure Act). The Coast Guard finds that harmonization of U.S. regulations with maritime security measures adopted by the International Maritime Organization (IMO) in December 2002, and the need to institute measures for the protection of U.S. maritime security as soon as practicable, furnish good cause for this interim rule to take effect immediately under both the Administrative Procedure Act and section 808 of the Congressional Review Act.

## Background and Purpose

A summary of the Coast Guard's regulatory initiatives for maritime security can be found under the Background and Purpose section in the preamble to the interim rule titled: "Implementation of National Maritime Security Initiatives" (USCG-2003-14792), published elsewhere in this issue of the Federal Register.

## Discussion of Comments Addressing Port Issues in the Notice of Meeting Docket

For a discussion of comments on ports at the public meetings and in the docket, see the interim rule titled: "Implementation of National Maritime Security Initiatives" (USCG-2003-14792), published elsewhere in today's issue of the Federal Register.

## Discussion of Interim Rule

This interim rule adds part 103 – Area Maritime Security to a new Subchapter H of Title 33 of the Code of Federal Regulations. This interim rule integrates port security-related requirements in the MTSA of 2002 and the International Ship and Port Facility Security (ISPS) Code. In the MTSA, the port security-related requirements are contained in the elements that address Area Maritime Security Plans and Federal Maritime Security Coordinators. In the ISPS Code, the port security-related requirements are contained in elements that address Port Facility Security Plans and Port Facility Security Officers. A detailed discussion on the MTSA and the ISPS Code and the need for these regulations can be found in the interim rule titled: "Implementation of National Maritime Security Initiatives" (USCG-2003-14792), published elsewhere in today's Federal Register.



Part 103—Port Security is composed of the following five subparts.

Subpart A—General.

This subpart applies to all vessels and facilities located in, on, under, or adjacent to waters subject to the jurisdiction of the U.S. A detailed discussion on applicability can be found in the interim rule titled: "Implementation of National Maritime Security Initiatives" (USCG-2003-14792), published elsewhere in today's Federal Register.

The MTSA and the International Ship and Port Facility Security (ISPS) Code use different terms to define similar, if not identical, persons or things. These differing terms sometimes match up with the terms used in subchapter H, but sometimes they do not. For a table of the terms used in subchapter H and their related terms in the MTSA and the ISPS Code, see the Discussion of Interim Rule section in the preamble for the interim rule titled "Implementation of National Maritime Security Initiatives" (USCG-2003-14792), published elsewhere in today's Federal Register.

To provide flexibility and a systems approach to security measures for certain areas, we will allow several Area Maritime Security Plans to be combined, if appropriate. This strategy is currently being used to

combine the inland river systems into one Area Maritime Security Plan; a similar system-wide concept is being developed for the Great Lakes. In addition, Outer Continental Shelf (OCS) facilities in the Gulf of Mexico will be covered by a single, district-wide plan implemented by the Eighth Coast Guard District. This process includes using each Area Maritime Security Assessment to form building blocks that will be used to create a system-wide security plan methodology that identifies vulnerabilities and consequences to be mitigated using regional strategies and resources. The resulting Area Maritime Security Plan will be a single document that provides consistent security measures throughout multiple Captain of the Port (COTP) zones.

Subpart B—Federal Maritime Security Coordinator (FMSC) Designation and Authorities.

This subpart designates the Coast Guard COTP as the Federal Maritime Security Coordinator. This designation, along with a description of the COTP's authority as Federal Maritime Security Coordinator to establish, convene, and direct the Area Maritime Security (AMS) Committee, fulfills the MTSA requirement to designate a Coast Guard official as the Federal Maritime Security Coordinator.

### Subpart C—Area Maritime Security (AMS) Committee.

This subpart describes the composition and responsibilities of the AMS Committee. The AMS Committee brings appropriately experienced representatives from a variety of sources in the port together to continually assess security risks to the port and determine appropriate risk mitigation strategies, develop, revise, and implement the AMS Plan. The AMS Committee may also be the mechanism by which security threats and changes in Maritime Security (MARSEC) Levels are communicated to port stakeholders. AMS Committee membership requirements and terms of office align with the criteria established in the MTSA for "Area Maritime Security Advisory Committees." Port Security Committees, such as those operating under the guidelines of U.S. Coast Guard Navigation and Vessel Inspection Circular (NVIC) 9-02, that were established prior to the publication of this rule, are considered AMS Committees, provided they conform to the procedures set forth in these rules. The AMS Committee members may include, but are not limited to, the following stakeholders: US Coast Guard, Federal, State, and local law enforcement, emergency response and public safety organizations, recreational vessel associations, environmental response organizations, labor organizations, port managers, and vessel and facility owner/operator

security representatives. There must at least seven members in the AMS Committee however; there could be as many as 200 or more representatives.

Subpart D—Area Maritime Security (AMS) Assessment.

This subpart directs the AMS Committee to ensure development of a risk-based AMS Assessment. The AMS Assessment is the important first step in developing an AMS Plan. This subpart lists the essential elements of an AMS Assessment, and these provisions are consistent with the elements of a "port facility security assessment" set forth in the ISPS Code. The AMS Assessment may be conducted by the AMS Committee members themselves or by persons acting on behalf of the AMS Committee. This subpart also establishes the skills and knowledge that persons conducting an AMS Assessment must possess. This subpart further identifies the process of evaluations that must be performed in the course of conducting the AMS Assessment: identification of activities or operations critical to the port area; a threat assessment; a consequence and vulnerability assessment; a categorization of each target/scenario combination; and measures that will be implemented at all MARSEC Levels. This process is consistent with the Port Security Assessment model identified in NVIC 9-02.

The following is a list of activities, operations, and infrastructure that may require assessment in the development of the AMS Plan: highway bridges, railroad bridges, stadiums, tourist attractions, significant symbolic structures, commercial attractions, marinas, fishing vessels, recreational boats, airports, nuclear facilities, power plants, oil and gas pipelines, anchorages, mid-stream operations (e.g., bunkering), under-and-over water cables, communication networks, utilities providing service to key transportation assets, barge-fleeting areas, oil and gas production platforms, tunnels, non-regulated vessels, non-regulated facilities, Outer Continental Shelf (OCS) facilities, lock and dams, public water supplies (e.g., aqueducts), boat ramps, docks, uninspected commercial vessels, passenger terminals, grain and aggregate facilities, ship yards, rail yards, tank farms, dikes, levees, sewer and water utility facilities, major marine or special events, waterways. Additional consideration should be given to the criticality of port operations as they relate to vessels and facilities that are directly regulated in parts 104 through 106 of Subchapter H.

The Coast Guard has also funded and contracted Port Security Assessments (PSA) in certain port areas throughout

the U.S. The Coast Guard-sponsored PSA team, when completing the PSA, should review the AMS Assessment and AMS Plan for content and consistency. As part of the PSA, recommendations will be made to the COTP on strategies to improve their AMS Plan in the port area that was covered by the PSA. These recommendations will be part of the AMS Plan review process to ensure the AMS Committee becomes aware of the PSA results and revises the AMS Plan appropriately.

Subpart E—Area Maritime Security (AMS) Plan.

The AMS Plan is primarily a communication and coordination document. This subpart establishes the core elements of the AMS Plan and its relationship to other plans. Core elements include: details of operational and physical measures that must be in place at all MARSEC Levels; expected timeframes for responding to security threats and changes of MARSEC Levels; communications procedures; measures to ensure the security of vessels, facilities, and operations that are not covered by the security requirements in other parts of this subchapter; measures to ensure the security of the information in the AMS Plan; periodic review, audit, and updating procedures; and procedures for reporting security incidents. These

requirements are consistent with the elements of a "port facility security plan" established in the ISPS Code.

This subpart also describes the review and approval process for the AMS Plan. The COTP will submit an AMS Plan to the cognizant District Commander for review, with the Area Commander, or his/her designee, having the authority to approve or disapprove the plan. Approving officers may require additional assessment, mitigation strategies, or other measures by parties subject to Coast Guard jurisdiction as a condition of approving AMS Plans. This review chain has been established to promote plan coordination and consistency within and among Coast Guard Districts and Areas. AMS Plans will form the basis for the National Maritime Transportation Security Plan, established in the MTSA, and will be consistent with the National Transportation Security Plan. This subpart establishes exercise requirements under the AMS Plan. Exercises are an important way to improve system performance and ensure the AMS Plan remains current.

Although the exercise requirements established in this interim rule may be satisfied by a tabletop exercise, as our experience with AMS Plans matures, it may be desirable to require periodic field training exercises for the future. Therefore, public comment is requested on a

requirement to conduct a maritime security field training exercise in each area covered by an AMS Plan at least once every three years. A maritime security field training exercise would require the deployment of personnel and equipment in accordance with the AMS Plan for the transportation security incident used for the exercise scenario. The purpose of the field training exercise would include: evaluating the adequacy of the AMS Plan, exercising coordination and interoperability between responding security forces and exercising coordination and interoperability amongst command personnel of responding agencies (i.e., Unified Command) as well as their ability to effectively command and control the response to the transportation security incident. The maritime security field training exercise may be combined with other exercises (e.g., National Preparedness for Response Program (PREP) area exercises) provided a significant security/terrorist attack aspect is included in the scenario.

Finally, this subpart prescribes AMS Assessment and AMS Plan records to be maintained by the COTP for five years, and exercise records for two years.



## Regulatory Assessment

This rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and has been reviewed by the Office of Management and Budget under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. An Assessment is available in the docket as indicated under ADDRESSES. A summary of the Assessment follows:

### Cost Assessment

This rule will affect stakeholders in 47 maritime areas containing 361 ports. The regulatory assessment and analysis documentation (see docket) details estimated costs to public and private stakeholders and does not include costs to the Coast Guard.

The total cost estimate of the rule, as it pertains to AMS, is present value (PV) \$477 million (2003-2012, seven percent discount rate). The initial cost of the startup period (June 2003-December 2003) for establishing AMS Committees and creating AMS Plans is estimated to be \$120 million (non-discounted) for all areas. Following the startup period, the first year of implementation (2004),

consisting of monthly AMS Committee meetings and AMS Plan exercises and drills for all areas, is estimated to be \$106 million (non-discounted). After the first year of implementation, the annual cost of quarterly AMS Committee meetings and AMS Plan exercises and drills for all areas is estimated to be \$46 million (non-discounted). The startup period cost associated with creating AMS Committees and AMS Plans for each area is the primary cost driver of the rule. Both the startup and implementation year period (2003-2004) combined is nearly half of the total 10-year PV cost estimate, making initial development, planning, and testing the primary costs of Area Maritime Security.

This rule will require all COTPs to establish security committees, plans, training drills, and exercises for their areas, with the participation of port stakeholders in their areas. The above costs to stakeholders will be paperwork, travel, and communication costs associated with participation in AMS Plan implementation.

We estimate 1,203,200 hours of paperwork and other associated planning activities during 2003, the initial period of security meetings and development. In 2004, the first year of implementation, we estimate the value will fall slightly to 1,090,400 hours of paperwork and other related information and communication activities related to

monthly AMS Committee meetings. In subsequent years, we estimate the hours will fall to 488,800 hours—annually associated with AMS Committee meetings, AMS Plan revisions, and information exercises and drills.

#### Benefit Assessment

This interim rule is one of six interim rules that implement national maritime security initiatives concerning general provisions, Area Maritime Security (ports), vessels, facilities, Outer Continental Shelf (OCS) facilities, and the Automatic Identification System (AIS). The Coast Guard used the National Risk Assessment Tool (N-RAT) to assess benefits that would result from increased security for vessels, facilities, Outer Continental Shelf (OCS) facilities, and ports. The N-RAT considers threat, vulnerability, and consequences for several maritime entities in various security-related scenarios. For a more detailed discussion on the N-RAT and how we employed this tool, refer to “Applicability of National Maritime Security Initiatives” in the interim rule titled “Implementation of National Maritime Security Initiatives” (USCG-2003-14792) published elsewhere in today’s Federal Register. For this benefit assessment, the Coast Guard used a team of experts to calculate a risk score for each entity and scenario before and after the implementation of required security

measures. The difference in before and after scores indicates the benefit of the proposed action.

We recognized that the interim rules are a “family” of rules that will reinforce and support one another in their implementation. We must ensure, however, that risk reduction that is credited in one rulemaking is not also credited in another. For a more detailed discussion on the benefit assessment and how we addressed the potential to double-count the risk reduced, refer to Benefit Assessment in the interim rule titled “Implementation of National Maritime Security Initiatives” (USCG-2003-14792) published elsewhere in today’s Federal Register.

We determined annual risk points reduced for each of the six interim rules using the N-RAT. The benefits are apportioned among the Vessel, Facility, OCS Facility, AMS, and AIS requirements. As shown in Table 1, the implementation of AMS Plans for the affected population reduces 135,202 risk points annually through 2012. The benefits attributable for part 101–General Provisions–were not considered separately since it is an overarching section for all the parts.

Table 1. Annual Risk Points Reduced by the Interim Rules.

Maritime Entity	Annual Risk Points Reduced by Rulemaking
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	Vessel Security Plans	Facility Security Plans	OCS Facility Security Plans	AMS Plans	AIS
Vessels	778,633	3,385	3,385	3,385	1,448
Facilities	2,025	469,686	-	2,025	-
OCS Facilities	41	-	9,903	-	-
Port Areas	587	587	-	129,792	105
Total	781,285	473,659	13,288	135,202	1,553

Once we determined the annual risk points reduced, we discounted these estimates to their PV (seven percent discount rate, 2003-2012) so that they could be compared to the costs. We presented the cost effectiveness, or dollars per risk point reduced, in two ways: first, we compared the first-year cost and first-year benefit because the first-year cost is the highest in our assessment as companies develop security plans and purchase equipment. Second, we compared the 10-year PV cost to the 10-year PV benefit. The results of our assessment are presented in Table 2.

Table 2. First-Year and 10-Year PV Cost and Benefit of the Interim Rules.

Item	Interim Rule				
	Vessel Security Plans	Facility Security Plans	OCS Facility Security Plans	AMS Plans	AIS*
First-Year Cost (millions)	\$218	\$1,125	\$3	\$120	\$41
First-Year Benefit	781,285	473,659	13,288	135,202	1,553
First-Year Cost Effectiveness (\$/Risk Point Reduced)	\$279	\$2,375	\$205	\$890	\$26,391
10-Year PV Cost	\$1,368	\$5,399	\$37	\$477	\$42

(millions)					
10-Year PV Benefit	5,871,540	3,559,655	99,863	1,016,074	11,671
10-Year PV Cost Effectiveness (\$/Risk Point Reduced)	\$233	\$1,517	\$368	\$469	\$3,624

\*Cost less monetized safety benefit.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The stakeholders affected by this rule include a variety of businesses and governments. The COTP will designate approximately 200 stakeholders, per maritime area, to engage in security planning, meetings, and drills. Full participation by these stakeholders will be voluntary. We estimate the first-year cost, per stakeholder, to be \$12,800 (non-discounted). In subsequent years, the annual cost, per stakeholder (full participation in this rule), falls to \$4,940 (non-discounted).

The results from our assessment (copy available in the docket) suggest that the impact of this rule is not

significant for port and maritime area authorities, owners, or operators because of the low average annual cost per stakeholder and the voluntary nature of participating in this rule.

We estimated the majority of small entities have a less than 3 percent impact on revenue if they choose to fully participate in this rule. We anticipate the few remaining small entities that may have a greater than 3 percent impact on annual revenue will either opt out (not participate) or partially participate in the rule to the extent that the impact on revenue is not a burden.

There are other stakeholders affected by this rule in addition to port authorities, owners, and operators. The stakeholders could be any entity that the COTP invites to partially or fully participate. We anticipate the impact on other possible small entity stakeholders to be minimal because of the low average annual cost per stakeholder and the voluntary nature of participating in this rule.

Therefore, the Coast Guard certifies, under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please

submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please consult LCDR Richard Teubner, USCG-MPS-2 by telephone 202-267-1103, toll-free telephone 1-800-842-8740 ext. 7-1103, or electronic mail [msregs@comdt.uscg.mil](mailto:msregs@comdt.uscg.mil).

Small businesses may send comments on the actions of Federal employees who enforce, or, otherwise, determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to



comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. It modifies an existing OMB-approved collection--1625-0077 [formerly 2115-0622]. A summary of the revised collection follows.

TITLE: Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements.

OMB CONTROL NUMBER: 1625-0077

SUMMARY OF THE COLLECTION OF INFORMATION: The Coast Guard requires security plans and communication procedures for U.S. ports and maritime areas. This rule provides a framework to ensure adequate security planning, exercises, drilling, and communication procedures by inviting port and maritime area stakeholders (at the discretion of the COTP) to participate in security planning events including, but not limited to, meetings and information drills as detailed in part 103.

NEED FOR INFORMATION: The primary need for information would be to determine if stakeholders are in compliance with security standards.

PROPOSED USE OF INFORMATION: This information can help to determine appropriate security measures for the affected population. This information also can help determine, in the case of a transportation security incident, whether failure to meet these regulations contributed to the transportation security incident.

DESCRIPTION OF THE RESPONDENTS: This rule will affect approximately 200 stakeholders in 47 maritime areas containing 361 ports. The respondents are public and private stakeholders in the affected port areas (at the discretion of the COTP).

NUMBER OF RESPONDENTS: 9,400 (200 stakeholders in 47 maritime areas).

FREQUENCY OF RESPONSE: Varies. Initial AMS Plan planning occurs throughout the first year on an undefined schedule. AMS Committee meetings may occur monthly in the first two years of this rule with quarterly AMS Committee meetings in subsequent years. Frequency of AMS Committee meetings is established in the AMS Committee Charter. After the first year, AMS Plan exercises occur once each

calendar year with no more than 18 months between exercises.

BURDEN OF RESPONSE: The burden of response is approximately 128 hours for the first year per stakeholder. The second year burden of response is 116 hours per stakeholder. In the subsequent years, the annual burden of response is approximately 52 hours per stakeholder.

ESTIMATE OF TOTAL ANNUAL BURDEN: During the initial year the burden will be 1,203,200 hours. Subsequently, the average annual reporting burden is 488,800 hours for all stakeholders in all 47 COTP zones. For a summary of all revisions to this existing OMB-approved collection, refer to Collection of Information in the interim rule titled "Implementation of National Maritime Security Initiatives" (USCG-2003-14792) published elsewhere in today's Federal Register.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to OMB for its review of the collection of information. Due to the circumstances surrounding this temporary rule, we asked for "emergency processing" of our request. We received OMB approval for the collection of information on June 16, 2003. It is valid until December 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under ADDRESSES, by the date under DATES.

You need not respond to a collection of information, unless it displays a currently valid control number from OMB. We received OMB approval for the collection of information on June 16, 2003. It is valid until December 31, 2003.

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. See the Federalism section in the preamble to the interim rule titled: "Implementation of

National Maritime Security Initiatives” (USCG-2003-14792) published elsewhere in today’s Federal Register, for a discussion of our analysis under this Executive Order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. This rule is exempted from assessing the effect of the regulatory action as required by the Act because it is necessary for the national security of the U.S. (2 U.S.C. 1503(5)).

#### Taking of Private Property

This interim rule will not effect taking of private property or, otherwise, have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This interim rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil

Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this interim rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this rule is an economically significant rule, it does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This interim rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this interim rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order. Although it is a "significant

regulatory action” under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

This interim rule has a positive effect on the supply, distribution, and use of energy. The interim rule provides for security assessments, plans, procedures, and standards, which will prove beneficial for the supply, distribution, and use of energy at increased levels of maritime security.

#### Trade Impact Assessment

The Trade Agreement Act of 1979 (19 U.S.C. 2501-2582) prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the U.S. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The Act also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. We have assessed the potential effect of this interim rule and have determined that it would likely create obstacles to the foreign commerce of the U.S. However, because these regulations

are being put in place in order to further a legitimate domestic objective, namely to increase the security of the U.S., any obstacles created by the regulation are not considered unnecessary obstacles.

#### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34) (a) and (34) (c) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This interim rule concerns security assessments and the establishment of security committees and coordinators that will contribute to a higher level of marine safety and security for U.S. ports. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES or SUPPLEMENTARY INFORMATION.

This rulemaking will not significantly impact the coastal zone. Further, the rulemaking and the execution of this rule will be done in conjunction with appropriate State coastal authorities. The Coast Guard will, therefore, comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone.



### List of Subjects in 33 CFR Part 103

Facilities, Harbors, Maritime security, Ports,  
Reporting and recordkeeping requirements, Security  
measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast  
Guard is adding part 103 to subchapter H of chapter I of  
title 33 in the CFR to read as follows:

Subchapter H-Maritime Security

PART 103—AREA MARITIME SECURITY

Subpart A—General

Sec.

103.100 Applicability.

103.105 Definitions.

Subpart B—Federal Maritime Security Coordinator (FMSC)

Designation and Authorities

103.200 Designation of the Federal Maritime Security  
Coordinator (FMSC).

103.205 Authority of the COTP as the Federal Maritime  
Security Coordinator (FMSC).

Subpart C—Area Maritime Security (AMS) Committee

103.300 Area Maritime Security (AMS) Committee.

103.305 Composition of an Area Maritime Security (AMS)  
Committee.

103.310 Responsibilities of the Area Maritime Security

(AMS) Committee.

Subpart D—Area Maritime Security (AMS) Assessment

103.400 General.

103.405 Elements of the Area Maritime Security (AMS) Assessment.

103.410 Persons involved in the Area Maritime Security (AMS).

Subpart E—Area Maritime Security (AMS) Plan

103.500 General.

103.505 Elements of the Area Maritime Security (AMS) Plan.

103.510 Area Maritime Security (AMS) Plan review and approval.

103.515 Exercises.

103.520 Recordkeeping.

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70102, 70103, 70104, 70112; 50 U.S.C. 191; 33 C.F.R. 1.05-1, 6.04-11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.

Subpart A—General

§ 103.100 Applicability.

This part applies to all vessels and facilities located in, on, under, or adjacent to waters subject to the jurisdiction of the U.S.

§ 103.105 Definitions.

Except as specifically stated in this subpart, the definitions in part 101 of this subchapter apply to this part.

Subpart B—Federal Maritime Security Coordinator (FMSC)  
Designation and Authorities

§ 103.200 Designation of the Federal Maritime Security  
Coordinator (FMSC).

The COTPs are the Federal Maritime Security Coordinators for their respective COTP zones described in 33 CFR part 3, including all ports and areas located therein.

§ 103.205 Authority of the COTP as the Federal Maritime  
Security Coordinator (FMSC).

(a) Without limitation to the authority vested in the COTP by statute or regulation, and in addition to authority prescribed elsewhere in this part, the COTP as the FMSC is authorized to:

- (1) Establish, convene, and direct the Area Maritime Security (AMS) Committee;
- (2) Appoint members to the AMS Committee;
- (3) Develop and maintain, in coordination with the AMS Committee, the AMS Plan;
- (4) Implement and exercise the AMS Plan; and

(5) Maintain the records required by § 103.520 of this part.

(b) The authorizations in paragraph (a) of this section do not limit any other existing authority of the COTP.

Subpart C—Area Maritime Security (AMS) Committee

§ 103.300 Area Maritime Security (AMS) Committee.

(a) The AMS Committee is established under the direction of the COTP and shall assist in the development, review, and update of the AMS Plan for their area of responsibility. For the purposes of this subchapter, Port Security Committees that were established prior to [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], according to guidance issued by the Coast Guard, may be considered AMS Committees, provided they conform to the procedures established by this part and satisfy the membership requirements of § 103.305 of this part.

(b) The AMS Committee will operate under terms specified in a written charter. At a minimum, the charter must address:

(1) The AMS Committee's purpose and geographic area of responsibility;

(2) Rules for membership;

(3) The AMS Committee's organizational structure and procedural rules of order;

(4) Frequency of meetings, to include not less than once in a calendar year or when requested by a majority of the AMS Committee members;

(5) Guidelines for public access to AMS Committee meetings and records; and

(6) Rules for handling and protecting classified, sensitive security, commercially sensitive, and proprietary information.

§ 103.305 Composition of an Area Maritime Security (AMS) Committee.

(a) An AMS Committee must be composed of not less than seven members, each having at least 5 years of experience related to maritime or port security operations, and who may be selected from:

(1) The Federal, Territorial, or Tribal government;

(2) The State government and political subdivisions thereof;

(3) Local public safety, crisis management and emergency response agencies;

(4) Law enforcement and security organizations;

(5) Maritime industry;

(6) Other port stakeholders having a special competence in maritime security; and

(7) Port stakeholders affected by security practices and policies.

(b) Members appointed under this section serve for a term of not more than five years. In appointing members, the COTP should consider the skills required by § 103.410 of this part. Prior to the appointment of an individual to a position on the AMS Committee, the COTP may require an appropriate security background examination of the candidate member.

§ 103.310 Responsibilities of the Area Maritime Security (AMS) Committee.

(a) The AMS Committee shall:

(1) Identify critical port infrastructure and operations;

(2) Identify risks (threats, vulnerabilities, and consequences);

(3) Determine mitigation strategies and implementation methods;

(4) Develop and describe the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and

(5) Provide advice to, and assist the COTP in, developing the AMS Plan.

(b) The AMS Committee shall also serve as a link for communicating threats and changes in MARSEC Levels, and disseminating appropriate security information to port stakeholders.

#### Subpart D—Area Maritime Security (AMS) Assessment

##### § 103.400 General.

(a) The Area Maritime Security (AMS) Committee will ensure that a risk based AMS Assessment, is completed and meets the requirements specified in § 103.310 of this part and § 101.510 of this subchapter, incorporating the elements specified in § 103.405 of this part.

(b) AMS Assessments can be completed by the COTP, the AMS Committee, a Coast Guard Port Security Assessment team, or by another third party approved by the AMS Committee.

(c) Upon completion of each AMS Assessment, a written report, which is designated sensitive security information, must be prepared consisting of:

(1) A summary of how the AMS Assessment was conducted;

(2) A description of each vulnerability and consequences found during the AMS Assessment; and

(3) A description of risk reduction strategies that could be used to ensure continued operation at an acceptable risk level.

§ 103.405 Elements of the Area Maritime Security (AMS) Assessment.

(a) The AMS Assessment must include the following elements:

(1) Identification of the critical Marine Transportation System infrastructure and operations in the port;

(2) Threat assessment that identifies and evaluates each potential threat on the basis of various factors, including capability and intention;

(3) Consequence and vulnerability assessment for each target/scenario combination; and

(4) A determination of the required security measures for the three MARSEC Levels.

(b) In order to meet the elements listed in paragraph (a) of this section, an AMS Assessment should consider each of the following:

(1) Physical security of infrastructure and operations at the port;

(2) Structures considered critical for the continued operation of the port;



(3) Existing security systems and equipment available to protect maritime personnel;

(4) Procedural policies;

(5) Radio and telecommunication systems, including computer systems and networks;

(6) Relevant transportation infrastructure;

(7) Utilities;

(8) Security resources and capabilities; and

(9) Other areas that may, if damaged, pose a risk to people, infrastructure, or operations within the port.

(c) AMS Assessments are sensitive security information and must be protected in accordance with 49 CFR part 1520.

§ 103.410 Persons involved in the Area Maritime Security (AMS) Assessment.

The persons carrying out the AMS Assessment must have the appropriate skills to evaluate the security of the port in accordance with this part. This includes being able to draw upon expert assistance in relation to:

(a) Knowledge of current security threats and patterns;

(b) Recognition and detection of dangerous substances, and devices;

(c) Recognition, on a non-discriminatory basis, of characteristics and behavioral patterns of persons who are likely to threaten security;

(d) Techniques used to circumvent security measures;

(e) Methods used to cause a transportation security incident;

(f) Effects of dangerous substances and devices on structures and port services;

(g) Port security requirements;

(h) Port business practices;

(i) Contingency planning, emergency preparedness, and response;

(j) Physical security measures;

(k) Radio and telecommunications systems, including computer systems and networks;

(l) Transportation and civil engineering;

(m) Vessel and port operations; and

(n) Knowledge of the impact, including cost impacts of implementing security measures on port operations.

Subpart E—Area Maritime Security (AMS) Plan

§ 103.500 General.

(a) The Area Maritime Security (AMS) Plan is developed by the COTP, in consultation with the AMS Committee, and is based on an AMS Assessment that meets the

provisions of subpart D of this part. The AMS Plan must be consistent with the National Maritime Transportation Security Plan and the National Transportation Security Plan.

(b) AMS Plans are sensitive security information and must be protected in accordance with 49 CFR part 1520.

§ 103.505 Elements of the Area Maritime Security (AMS) Plan.

The AMS Plan should address the following elements, as applicable:

(a) Details of both operational and physical measures that are in place in the port at MARSEC Level 1;

(b) Details of the additional security measures that enable the port to progress, without delay, to MARSEC Level 2 and, when necessary, to MARSEC Level 3;

(c) Details of the security incident command-and-response structure;

(d) Details for regular audit of the AMS Plan, and for its amendment in response to experience or changing circumstances;

(e) Measures to prevent the introduction of dangerous substances and devices into designated restricted areas within the port;

- (f) Measures to prevent unauthorized access to designated restricted areas within the port;
- (g) Procedures and expected timeframes for responding to security threats or breaches of security, including provisions for maintaining infrastructure and operations in the port;
- (h) Procedures for responding to any security instructions the Coast Guard announces at MARSEC Level 3;
- (i) Procedures for evacuation within the port in case of security threats or breaches of security;
- (j) Procedures for periodic plan review, exercise, and updating;
- (k) Procedures for reporting transportation security incidents (TSI);
- (l) Identification of, and methods to communicate with, Facility Security Officers (FSO), Company Security Officers (CSO), Vessel Security Officers (VSO), public safety officers, emergency response personnel, and crisis management organization representatives within the port, including 24-hour contact details;
- (m) Measures to ensure the security of the information contained in the AMS Plan;
- (n) Security measures designed to ensure effective security of infrastructure, special events, vessels,

passengers, cargo, and cargo handling equipment at facilities within the port not otherwise covered by a Vessel or Facility Security Plan, approved under part 104, 105, or 106 of this subchapter;

(o) Procedures to be taken when a vessel is at a higher security level than the facility or port it is visiting;

(p) Procedures for responding if a vessel security alert system on board a vessel within or near the port has been activated;

(q) Procedures for communicating appropriate security and threat information to the public;

(r) Procedures for handling reports from the public and maritime industry regarding suspicious activity;

(s) Security resources available for incident response and their capabilities;

(t) Procedures for responding to a TSI; and

(u) Procedures to facilitate the recovery of the Marine Transportation System after a TSI.

§ 103.510 Area Maritime Security (AMS) Plan review and approval.

Each AMS Plan will be submitted to the cognizant District Commander for review and then forwarded to the Area Commander for approval.

§ 103.515 Exercises.

(a) The COTP shall coordinate with the Area Maritime Security (AMS) Committee to conduct an exercise at least once each calendar year, with no more than 18 months between exercises, to test the effectiveness of the AMS Plan.

(b) An exercise may consist of any of the following:

(1) A tabletop exercise to validate the AMS Plan. No equipment or personnel deployment is required;

(2) A field training exercise consisting of personnel deployment and use of security equipment; or

(3) A combination of § 103.515(b)(1) and (b)(2).

(c) Upon concurrence of the cognizant District Commander, an actual increase in MARSEC Level, or implementation of enhanced security measures during periods of critical port operations or special marine events may satisfy the exercise requirements of this section.

§ 103.520 Recordkeeping.

(a) All records pertaining to the Area Maritime Security (AMS) Assessment and AMS Plan will be retained by the COTP for 5 years.

(b) Exercise documentation will be kept by the COTP for 2 years.

Dated: June 23, 2003

THOMAS H. COLLINS  
Admiral, U.S. Coast Guard  
Commandant